BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of Federal-State Joint Board On Universal Service	CC Docket No. 96-45

REPLY COMMENTS OF CENTENNIAL COMMUNICATIONS CORP.

Centennial Communications Corp. ("Centennial") hereby submits these reply comments in this matter.[1]

INTRODUCTION AND SUMMARY

The record shows that the Commission should reject the proposal to limit universal service funding to "primary lines." The comments show that the primary line proposal is vague, unworkable, contrary to the statute, and unnecessary. Those who favor it (and other *ad hoc* plans to limit the overall size of the fund) offer only rhetoric and anecdotes, not analysis and evidence. In fact, there is no urgent need to radically reform the basis for the distribution of universal service support. Instead, what is needed is a broader review of the universal service program.

A key problem with the primary line proposal is the Joint Board's unspoken assumption that the baseline objective of universal service is and should be to preserve the availability of what rural landline ILECs offer. The flip side of this assumption is that other providers —

[1] Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, 19 FCC Rcd 10805 (FCC rel. June 8, 2004) ("*NPRM*"). The date for reply comments was extended to September 21, 2004. *See* Wireline Competition Bureau Extends Reply Comment Due Date in the Commission's Eligible Telecommunications Carrier and High-Cost Proceeding, Public Notice, CC Docket No. 96-45, DA 04-2687 (FCC rel. Aug. 26, 2004).

notably wireless providers — are somehow interlopers trying to leech off the system for as long as they can before the system is changed.

The reality is quite different: as various commenters recognize, the nation's telecommunications markets are undergoing a fundamental shift in demand. Whether measured by lines in service, growth rates or usage, wireless services — not landline — should be viewed as the baseline against which other services should now be judged. Given the ongoing growth of the wireless market, any universal service plan that does not actively ensure that wireless alternatives are available in rural markets is inconsistent with the statutory mandate to ensure that rural consumers have the same service options as urban consumers enjoy.[2]

Dealing with this new telecommunications reality will be wrenching for established incumbent landline ILECs — and for the regulatory system that has grown up to accommodate their concerns. Even so, the Commission should acknowledge this reality, rather than shy away from it. In fact, universal service is a good place to start, because — as various rural ILEC commenters themselves acknowledge — in the normal case wireless carriers can provide supported services more efficiently than can a landline carrier, while also offering added features such as mobility and nationwide calling plans.

The record also shows that — for these same reasons — even if there is a perceived need to take action now to limit the growth of the fund, that goal should not be accomplished by interfering with the process of certifying competitive ETCs. The public interest is served, not hindered, by certifying additional wireless ETCs. If it is necessary to limit overall fund growth while the fundamental reexamination of universal service is underway, then the Commission

[2] 47 U.S.C. § 254(b)(3).

should adopt a competitively neutral interim solution. Possibilities include capping per-line support at the level in effect when the first competitive ETC is certified for a study area; capping total funding for a study area at that time and dividing it among all ETCs based on market share; or capping total national fund payments at a particular level and — to the extent that the total claims on the fund exceed that cap — distributing it *pro rata* based on total requests for disbursements. In all events, the Commission should make clear that concerns about the overall level of universal service funding are ***national*** concerns, not state-level concerns, and should specifically hold that piecemeal state-level efforts to manage the level of the overall universal service fund are inappropriate.

Finally, commenters confirm that it would be a mistake for the Commission to mandate or permit states to impose "public interest" requirements that are slanted towards the networks, capabilities and offerings of landline ILECs. Quality standards, emergency uptime standards, consumer protection standards, etc., must not be used as a cover for excluding wireless ETCs by using criteria that are easy or customary for landline LECs but inappropriate or unreasonably difficult for wireless networks.

1. THE COMMISSION SHOULD REJECT THE "PRIMARY LINE" PROPOSAL.

The comments show a widespread consensus that the proposal in the *Recommended Decision* to move to a "primary line" system for disbursing universal service funds[3] should be treated as dead on arrival. Any number of commenters pointed out that such a system would be

[3] Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (FCC rel. Feb. 7, 2004) ("*Recommended Decision*") at ¶¶ 56-71. The *NPRM* itself is relatively brief, identifying in a few paragraphs the key areas addressed by the *Recommended Decision,* and seeking comment on them. *See NPRM* at ¶¶ 2-5. For this reason, we will cite directly to the portions of the *Recommended Decision* at issue, rather than to the *NPRM* itself.

administratively unworkable;[4] that it would fly in the face of the notion of competitive neutrality;[5] and that it would defeat, not advance, a central objective of universal service, which is making sure that rural consumers have the same range of telecommunications options, at affordable rates, as are enjoyed by urban and suburban citizens.[6] At the same time, the tone and content of the comments of a main supporter of the primary line proposal, Verizon, are so blatantly anti-competitive that the Commission should dismiss those comments out of hand.[7]

The most trenchant observation on this topic appeared in the comments of the Public Utility Commission of Oregon. That body recognized — and counseled that this Commission step back from — the essentially panicked nature of the Joint Board's primary line proposal:

> The concern about CETC funding has to do with its rate of growth, not its absolute level. The policy implication of this is that the focus should be on a sound long-run solution, not a crisis response.

Oregon Comments at 6. As the Oregon commission recognized, somehow the Joint Board appears to have been stampeded into proposing a radical (and illegal) revision of the entire

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4 BellSouth Comments at 8-11; Comments of Sprint Corporation on the Joint Board Recommended Decision ("Sprint Comments") at 18-20.

5 Sprint Comments at 14-17.

6 BellSouth Comments at 8; Comments of Western Wireless at 11; Comments of Nextel Partners, Inc. at 24-26. Verizon attempts to walk away from this statutory requirement by characterizing the goal of universal service as simply to "build the necessary infrastructure to provide customers in high cost areas with access to basic, affordable telecommunications services." Comments of Verizon at 2. One can certainly imagine a universal service system with this modest goal, but that is not what the statute says. It says that rural Americans should have comparable service options to those living in more urban areas. 47 U.S.C. § 254(b)(3). Obviously, the latter have much more than simply "access to basic, affordable telecommunications." If Verizon wants to cut back on Congress's goals for the nation's universal service system, it should seek statutory changes; it should not urge the Commission to ignore what present law actually says.

7 Verizon Comments at 15-17. *See also* Comments of Qwest Communications International, Inc. at 3 (suggesting that the "first connection provided to customer" should be designated as primary line).

universal service system in order to avoid a supposedly impending disaster that is neither particularly imminent nor, at bottom, particularly disastrous.[8]

The broader point, however, is that a "sound long-run solution" to the universal service funding problem needs to grapple directly with the changing face of United States telecommunications technology and demand. Specifically, for basic voice communications, the United States (like the rest of the world) is moving from primary reliance on wired networks to primary reliance on wireless networks. Again, Oregon commission commented that:

> Many industry experts do not see these trends as evidence that wireless is [merely] an adjunct service. For example, Michael J. Balhoff, Managing Director of Legg Mason interprets these trends as a "clear and forceful shift in subscriber base."

Oregon Comments at 7 (footnote omitted).

As a result, the Joint Board's panicked proposal for how to save landline rural ILECs — and the variations on that theme presented by various commenters — is fundamentally misguided. The goal of universal service going forward should not be providing financial life support — a form of corporate welfare — for firms with an embedded base of investment in an old, limited technology. It should be, as the statute plainly requires, ensuring that rural Americans have the same telecommunications options at affordable rates as their urban counterparts. In the 21st Century, ***that means supporting the deployment of robust wireless networks in rural America,*** just as it meant supporting the deployment of traditional wired networks during the last century. *Cf.* Alltel Comments at 2-3.

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[8] Comments of Dobson Cellular Systems, Inc. ("Dobson Comments") at 26-27; Comments of Nextel Partners at 21-24. As these commenters explain, the primary line proposal is illegal because it is not competitively neutral — a requirement that courts have found included in the statute, *see, e.g., Alenco Communications, Inc. v. FCC,* 201 F.3d 608 (5th Cir. 2000) — and plainly would not afford rural customers the same options available in urban areas, as required by 47 U.S.C. § 254 (b)(3).

In addition to being a sensible, forward-looking policy, focusing on wireless deployment simply makes economic sense. A coalition of rural providers (mainly rural ILECs and their affiliates), in suggesting an alternative to the primary line proposal, specifically suggested that wireless CETCs should get less — a lot less — per line than their rural landline counterparts. The reason? Simple:

> The costs for a wireless carrier to provide service over a given area are generally lower than the costs for an ILEC to provide service in the same area.

Rural Telecommunications Associations Comments at 8. This is not viewed by these rural ILECs and their affiliates as controversial. To the contrary, they assert that:

> Readily available industry data supports the presumption that wireless carriers' costs are lower than ILECs' costs.

Id. This is likely to be particularly true in areas where the landline ILEC is receiving very high levels of per-line support. As the Oregon commission noted, in some study areas, "high per line support may be an indicator that other [non-wireline] technologies are more suitable for providing universal service." Oregon Comments at 5.

The superior efficiency of wireless over landline service in many universal service applications is illustrated by Centennial's recent commitment — now in the process of build-out — to provide service to Shaw and Blackhawk, Louisiana, two previously unserved communities.[9] The only reason landline ILECs have not served these communities in the past is the extremely unfavorable economics of doing so. In the abstract, of course, it is not "economic" for Centennial to serve these communities either. But with universal service funding, it is much more feasible — and much more valuable to the public — for Centennial to serve these areas

[9] *See* Centennial Comments at 18.

with its wireless technology than for a landline ILEC to provide service to a small number of discrete locations, providing limited service at great expense. In short, Centennial and other wireless carriers can provide more (and more advanced) services to more people, using fewer universal service dollars, than landline ILECs.

The greater efficiency of wireless technology frankly compels that this Commission ask, "Why then should we spend our money paying extra for more expensive, old technology? Shouldn't we be designing our system to encourage the rapid deployment of the less expensive, new and more versatile technology?"

Centennial is not suggesting that the Commission cut off universal service funding for rural landline ILECs. Centennial is suggesting, however, that the Commission should be looking for ways to modify the universal service system over time to allocate funds towards wireless service.[10]

2. If The Commission Perceives A Need To Limit Fund Growth on an Interim Basis, The Limitation Must Be Competitively Neutral.

The record shows that what is necessary at this point is not an emergency effort to stem fund growth, but rather a long-term focus on reformulating the universal service system to more accurately reflect the changing nature of telecommunications services and demand in the country. Oregon Comments at 3. Even so, the Commission may conclude that some interim step to slow fund growth is appropriate while that reformulation is underway.

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[10] The terrible problem for landline ILECs — that wireless is a superior, cheaper technology — is what underlies the landline ILEC complaints that wireless CETCs are somehow being over-compensated by the identical support rule and should be required either to accept less as a general proposition (*e.g.,* Rural Telecommunications Associations Comments at 8-9) or be required to justify specific support amounts based on specific cost showings (*e.g.,* NTCA Initial Comments at 13-14).

In that case, however, it is critical that the Commission avoid purportedly "interim" steps that actually interfere with the orderly transition of universal service from a landline-centric 20th century program to a modern, technology-neutral program that reflects evolving modes of communication and consumer demand. For this reason, the Commission must avoid idiosyncratic "plans" supposedly designed to restrain fund growth, but actually designed to entrench existing landline ILECs and disadvantage wireless CETCs. These include, for example, the proposals of the Rural Telecommunications Associations and SBC.[11]

If an interim limit on fund growth is deemed necessary, therefore, it should be national in scope, competitively neutral, and preemptive. Possibilities include capping per-line support at the level in effect when the first competitive ETC is certified for a study area;[12] capping total funding for a study area at that time and dividing it among all ETCs based on market share;[13] or capping total national fund payments at a particular level and — to the extent that the total claims on the fund exceed that cap — distributing it *pro rata* based on total requests for disbursements.[14] Any of these approaches would require all ETCs to fairly shoulder the burden of constraints on the overall fund, rather than recasting universal service funding as blatant and unjustified corporate welfare for companies using old and more expensive technology.

In all events, the Commission should make clear that concerns about the overall level of universal service funding are ***national*** concerns, not state-level concerns, and should specifically

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11 SBC is actually correct in its statement that much of the underlying problem is that "states have done little, if anything, to eliminate their reliance on implicit subsidies to support universal service." SBC Comments at 3; *accord*, Sprint Comments at 11-12 (Sprint has been forced by regulators to maintain local rates that are much lower than urban rates for comparable services, and that are well below cost.).

12 Verizon Comments at 18; Comments of CTIA at 22-23; Comments of GCI at 28.

13 Dobson Comments at 28.

14 Oregon Comments at 8.

hold that state-level efforts to manage the level of the overall universal service fund are inappropriate.[15] Questions of overall fund growth are exclusively ***national-level*** questions. It is completely inappropriate to ask state regulators to deny rural consumers the same options that urban consumers enjoy because this Commission has not yet settled on a reasonable long-term policy that leads to a sustainable level of funding. If put to such a choice, state regulators will face intense pressures to simply maintain the typical *status quo* of one old-fashioned landline rural ILEC receiving funding, to the detriment of rural consumers who — as a matter of law — are as entitled as their urban brethren to be able to choose from several options for basic service, including modern, highly functional wireless services.

3. ANY "PUBLIC INTEREST" CRITERIA MUST BE COMPETITIVELY NEUTRAL.

Centennial explained in its initial comments that any "public interest" criteria, whether permissive or mandatory, must be competitively neutral.[16] Numerous other commenters agree.[17] Centennial emphasizes two points in this regard here.

First, no specific "local" usage requirement should be imposed. As noted by the Oregon Public Utilities Commission, the entire concept of "local" calling is becoming obsolete. As that commission found, ***transcending*** traditional landline concepts, such as "local" traffic, is one of the key benefits of wireless service. For this reason, the Commission should reject any explicit

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15 Comments of Rural Cellular Association at 18; Comments of United States Cellular Corporation at 38. Centennial agrees with the Rural Cellular Association and United States Cellular that, to the extent that this involves explicitly reversing this aspect of the Commission's decision in *Highland Cellular*, this Commission should do so. Centennial notes that while it may be appropriate for ***this Commission,*** with its national focus, to be concerned with overall funding levels — even when acting on an individual certification request — the same cannot be said for any specific state decisionmaker, whose jurisdiction and perspective necessarily are far less than national in scope.

16 Centennial Comments at 5.

17 Sprint Comments at 25-27; Comments at Comments of Western Wireless at 19-20; Comments of United States Cellular at 33-35; Comments of Nextel Partners at 16-17; Comments of Rural Cellular Associations at 13-15; Dobson Comments at 3-7.

"local usage" requirement, because the entire concept of "local" as opposed to "toll" calling is becoming obsolete:

> As another example, it is very clear that many consumers have shifted away from choosing service based on the amount of included local usage and instead choose service based on a package of usage that is statewide or national in scope. Usage charges and usage allowances, if they exist at all, are often for calling during the business day only, regardless of the location of the called party. Charges often don't apply on evenings and weekends. ***Local calling areas are part of legacy rate structures that are gradually disappearing in the marketplace because they don't correspond to what consumers want.***

Oregon Comments at 3 (emphasis added). There is no conceivable reason for restricting the access of wireless ETCs to universal service funds on the basis of "legacy [landline] rate structures" that are "disappearing ... because they don't correspond to what consumers want."

Second, SBC suggests that CETCs must be subject to the same regulatory requirements as ILECs, supposedly because someday a landline ILEC might surrender its ETC status, leaving the CETC as the carrier of last resort. SBC Comments at 7-8. This is simply wrong. The focus should always be on what benefits consumers, not what benefits the established landline ILECs. From that perspective, if a wireless CETC becomes a carrier of last resort, then even if some additional requirements are appropriate, they would not logically or necessarily be the same as the requirements that evolved to conform to the operations of landline ILECs. Second, as Sprint points out, the prospect of a landline ILEC actually surrendering its ETC status is quite remote. Sprint Comments at 30. If that ever actually occurs, the affected state commission can deal with that situation on an individualized basis.

4. CERTAIN ADMINISTRATIVE CHANGES ARE APPROPRIATE.

There is widespread agreement that certain administrative changes in the universal service system are appropriate. For example, no one seriously disputes that when a competitive

ETC is designated, funding should automatically begin as of the date of designation.[18] Similarly, to the extent that it is necessary to disaggregate a rural ILEC's study area to accommodate a wireless ETC's service area that includes some, but not all of the ILEC's territory, that process, too, should be automatic.[19]

However, the Commission should not adopt proposed administrative rules regarding the location of wireless customers. These proposed rules would harm consumers with no corresponding administrative or other benefits. BellSouth, for example, suggests that wireless carriers should be required to show that they are providing a functional signal to the customer's billing address in order to receive support for a wireless line billed to that address. BellSouth Comments at 2. This is completely contrary to the entire point of universal service funding. If a customer's billing address is without adequate signal, the correct solution is for the wireless ETC to use universal service funds to adjust and expand its wireless network to cover that area — thereby improving service to the customer and the public — not denying the ETC funding, thereby making it economically more difficult to improve service.[20]

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18 Dobson Comments at 31; Comments of CTIA at 13-14.

19 There is also consensus that it may be inappropriate to designate a wireless ETC whose FCC-designated service territory would create a situation of involuntary "cream-skimming" of the sort addressed in the *Virginia Cellular* case. *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia,* CC Docket No. 96-45, FCC 03-338 (released January 22, 2004). *See also* Comments of Rural Cellular Association and the Alliance or Rural CMRS Carriers at 21; NTCA Initial Comments at 19.

20 The supposed purpose of these proposals is to keep wireless carriers from obtaining universal service funds to which they are not entitled. As Centennial has noted, there is no reason to believe that universal service funds are being, or will be, misapplied by wireless ETCs; indeed, the sheer volume of payments to landline ILEC ETCs suggests that problems with misapplication/misuse of funds would be more common on the landline side. *See* Centennial Comments at 9-10. Recent press reports suggest that this may indeed be true. *See* New York Daily News, "Mob Dials for Dough: Say Millions Swindled Using Tiny Midwest Firm," http://www.nydailynews.com/news/crime_file/story/233538p-200567c.html (published September 19, 2004) (USF funds misdirected to cover inflated consulting and other costs). *See also* Kansas City Business Journal, "Kansas Regulators Open Inquiry Into CassTel," (published

(note continued)...

BellSouth also suggests that the Commission adopt a proposal developed in Washington state, under which a wireless carrier would have to certify that 50% of calls on a customer's service originated in the specific landline exchange for which the wireless service is designated as a supported line. BellSouth at 13. This proposal makes no sense. A customer can have a wireless phone to use as his or her basic lifeline connection to the rest of the world — including emergency and other calls from home — and still spend more than half of his or her actual talk time in the car, at work or school, etc. In this regard, the Commission should reject ***any*** proposal that tries to impose restrictions on wireless services based on old-fashioned landline concepts such as an "exchange" area. As noted above, such concepts no longer "correspond to what consumers want." Oregon Comments at 3.

CONCLUSION

The record is clear that the Joint Board's primary line proposal should be rejected. Indeed, the record does not support any sort of panicked effort to cut off fund growth. Instead, what is needed is a careful, measured re-evaluation of the entire notion of universal service that properly reflects the ongoing transition of United States telecommunications markets from being primarily focused on old-fashioned, expensive landline service to being primarily focused on versatile, efficient wireless service. Backward-looking funding and support mechanisms will only leave consumers with a backwards telecommunications system. If limitations on fund growth are needed on an interim basis while that re-evaluation is underway, any such limitations must be carefully crafted to be competitively neutral.

...(note continued)
August 10, 2004), http://kansascity.bizjournals.com/kansascity/stories/2004/08/09/daily10.html (noting earlier arrest of rural LEC CEO in connection with allegations of misconduct, including relating to the universal service fund).

These same considerations underscore the need to ensure that any "public interest" requirements placed on new ETCs are not simply "stealth" means to harm consumers by denying them the same robust wireless services and options available in urban areas.

Finally, there is broad consensus that certain efficiency-enhancing changes in the administration of the fund are necessary, and the Commission should adopt them.

Respectfully submitted,

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